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SPEECH OF HON. F. T. FRELINGHUYSEN.

ON THE

### CIVIL RIGHTS BILL.

Mr. FRELINGHUYSEN. I would gladly forego making any remarks to have a vote on the bill. As it appears the vote cannot be taken at once, I will occupy the time of the Senate for a short period.

Mr. President, the Committee on the Judiciary have devolved on me, on whom it should not have been imposed, the duty of presenting and explaining this bill, which I shall do in the most concise manner, even pruning from my remarks such comment as a measure having for its object the civil rights of all might naturally inspire in the councils of a free people.

I invoke for the bill a calm, impartial, and unpartisan consideration, and ask its adoption only as it commends itself as consistent with the permanent interests of the nation, with the Constitution, and with justice to all classes of citizens. Would that the author of the measure was here to present and defend it. To our views it would have been becoming that he who was in the forum the foremost leader of the grandest victory of the nineteenth century in the Western Hemisphere, the victory of freedom over slavery, should have placed the capstone on the structure he was permitted to be an efficient instrumentality in aiding to erect. But it was otherwise decreed.

I call the attention of the Senate to but two sections of this measure—the first section and the fourth section of the amendment; the other parts of the bill being mere machinery to carry those into effect. The first section provides:

That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters, and other places of public amusement; and also of common schools and public institutions of learning or benevolence, supported in whole or in part by general taxation, and of cemeteries so supported, subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude.

The fourth section provides:

That no citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States or of any State on account of race, color, or previous condition of servitude; and any other or other person charged with any duty in the selection or summoning of jurors who shall exclude or fail to summon any citizen for the reasons aforesaid shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not more than \$5,000.

Thirteen years ago in this Republic the foundation principles of which are freedom and political equality, there were four million slaves. There came a bloody war between those who heretofore had striven together for the glory of the Republic—a war rendered the more terrible and destructive by the universal bravery and heroism of the American character. This war was followed by amendments to the Constitution which were discussed and

contested in the national councils and on the public platforms with an energy and ability not inferior to those which had characterized the then recent contest of arms. That whole struggle in field and forum was one between freedom and slavery, between national sovereignty and State sovereignty, a struggle between United States citizenship and State citizenship, and the superiority of the allegiance due to each. We all know how the contest was decided.

It is the one purpose of this bill to assert, or rather to reassert "freedom from all discrimination before the law as one of the fundamental rights of United States citizenship." If, sir, we have not the constitutional right thus to legislate, then the people of this country have perpetrated a blunder amounting to a grim burlesque over which the world might laugh were it not that it is a blunder over which humanity would have occasion to mourn. Sir, we have the right, in the language of the Constitution, to give "to all persons within the jurisdiction of the United States the equal protection of the laws."

This bill when enacted, it is believed, will be a finality, removing from legislation, from politics, and from society, an injurious agitation, and securing to every citizen that proud equality which our nation declares to be his right, and which is a boon in defense of which most men would die.

It is the friction created by discrimination among citizens in the administration of law that disturbs the harmony of government. Let us take away the foreign substance. We know we have proven that equality is the true principle on which to run society; give it full play with no obstruction, and the machine will run noiselessly and without a jar. On the contrary, keep four millions impressed with the conviction that they are denied the full and perfect enjoyment of that equality which all others have guaranteed to them, and that by a nation they are taxed to support, and to defend which they fought, and they will be dissatisfied, asserting, and obtrusive; and their obtrusiveness will engender prejudice and augment the evil.

The colored citizens ask this legislation, not because they seek to force themselves into associations with the whites, but because they have their pride and emulations among themselves, and wish there in those associations to feel that there is no ban upon them, but that they are as fully enfranchised as any who breathe the air of heaven.

I ask you, should the colored citizens be content to demand less than full and equal enfranchisement; should they say "We are content that we and our children shall wear forever the badge of political inferiority," would they not thereby prove themselves to you to be unfit for the high dignity to which the nation has called them? Let us not doubt the foundation principle of our Government; it has always proved true. Give equality to all. Our confidence will not be abused.

This bill applies alike to the white citizen and to the colored citizen. I am aware that the majority of the Supreme Court in the Slaughterhouse case, (16 Wallace,) giving construction to the thirteenth, fourteenth and fifteenth amendments in the light of the history which called them into being, make them apply especially, though not exclusively I think, to the enfranchisement of the colored race. There can be no doubt they apply equally to all races.

The court, in the case of The Live-stock Association vs. The Crescent City Live-stock Company, (1 Abbott, page 88,) undoubtedly give the true construction to the amendments as to their application. The court say:

The articles were not themselves aware of the far-reaching character of its terms. They may have had in mind but one particular phase of social and political wrongs which they desired to redress. Yet if the amendment as framed and expressed does in fact bear a broader meaning, and does extend its protecting shield over those who were never thought of when it was conceived and put in form, and does reach social evils which were never before prohibited by constitutional enactment it is to be presumed that the American people in giving it their imprimatur understood what they were doing, and meant to decree what has in fact been decreed.

This bill, therefore, properly secures equal rights to the white as well as to the colored race.

Again let me say that this measure does not touch the subject of social equality. That is not an element of citizenship. The law which regulates that, is found only in the tastes and affinities of the mind; its law is the arbitrary, uncontrolled human will. You cannot enact it.

This bill does not disturb any laws, whether statute or common, relating to the administration of inns, places of public amusement, schools, institutions of learning or benevolence, or cemeteries, supported in whole or in part by general taxation, (and it is only to these that it applies,) excepting to abrogate such laws as make discrimination on account of race, color, or previous servitude.

Inns, places of amusement, and public conveyances are established and maintained by private enterprise and capital, but bear that intimate relation to the public, appealing to and depending upon its patronage for support, that the law has for many centuries measurably regulated them, leaving at the same time a wide discretion as to their administration in their proprietors. This body of law and this discretion are not disturbed by this bill, except when the one or the other discriminates on account of race, color, or previous servitude.

As the capital invested in inns, places of amusement, and public conveyances is that of the proprietors, and as they alone can know what minute arrangements their business requires, the discretion as to the particular accommodation to be given to the guest, the traveler, and the visitor is quite wide. But as the employment these proprietors have selected touches the public, the law demands that the accommodation shall be good and suitable, and this bill adds to that requirement the condition that no person shall, in the regulation of these employments, be discriminated against merely because he is an American or an Irishman, a German or a colored man.

I have called attention to inns, places of amusement, and public conveyances, separately from schools, institutions of learning and benevolence, and cemeteries, supported in whole or in part by general taxation, because the condition of the existence of the former, to wit: inns, places of amusement, and public conveyances differ from that of the latter, to wit: schools, institutions of benevolence, and cemeteries. I assume that no one can question that schools, institutions of learning and benevolence, and cemeteries, which are supported by the taxation of all, should be subject to the equal use of all. Subjecting to taxation is a guarantee of the right to use. Even as to these institutions, which are the fruit of taxation, the bill does not disturb the established law, statute or common, or the discretion of their managers, except so far as the one or the other, in violation of the fundamental principles of our Government, discriminates against some one under our jurisdiction because of his blood, because of his complexion, because of the cruel wrong of slavery which he may have suffered.

Uniform discrimination may be made in schools and institutions of learning and benevolence on account of age, sex, morals, preparatory qualifications, health, and the like. But the son of the poorest Irishman in the land, who has sought our shores to better the condition of his offspring, shall have as good a place in our schools as the scion of the chief man of the parish. The old blind Italian, who comes otherwise within the regulations of an asylum for the blind supported by taxation, shall have as good a right to its relief as if he were an American born.

There is but one idea in the bill and that is: The equality of races before the law.

The inquiry may arise whether this bill admits of the classification of races in the common-school system; that is, having one school for white and another for colored children. That subject has been discussed somewhat in the courts. In a case in 24 Iowa Reports, page 264, it was directly considered. There the court held that—

The constitution and statutes in force effectuating it provide for the education of all the youths of the State, without distinction of color; and the board of directors have no discretionary power to require colored children to attend a separate school. They may exercise a uniform discretion, operative upon all, as to the residence or qualification of children to entitle them to admission to each particular school, but they cannot deny a youth admission to any particular school, because of his color, nationality, religion, or the like.

The law of Iowa goes further than the law proposed in this bill. Here there is no prohibition as to a discrimination on account of religion or of morals. It does not say that all youth shall have this right. The only prohibition in this bill is one which prevents discrimination on account of race. The same subject was considered in the case of The State on the relation of *Garnes vs. McCann* and others, in 21 Ohio Reports, page 198. There the court held—

That the act authorizing such classification on the basis of color does not contravene the constitution of the State, nor the fourteenth amendment of the Constitution of the United States, and that colored children residing in either of the districts for white children, are not, as of right, entitled to admission into the schools for white children.

The constitution and laws of Iowa provide for the "education of all the youths of the State without distinction of color." In Ohio the statute expressly provided for separate schools for white and colored children. Therefore the decisions of those courts afford no precedent for the construction of this bill when enacted. The language of this bill secures full and equal privileges in the schools, subject to laws which do not discriminate as to color.

The bill provides that full and equal privileges shall be enjoyed by all persons in public schools supported by taxation, subject only to the limitation established by law, applicable alike to citizens of every race and color and regardless of previous servitude.

The bill does not permit the exclusion of one from a public school on account of his nationality alone. The object of the bill is to destroy, not to recognize, the distinctions of race.

When in a school district there are two schools, and the white children choose to go to one and the colored to the other, there is nothing in this bill that prevents their doing so.

And this bill being a law, such a voluntary division would not in any way invalidate an assessment for taxes to support such schools.

And let me say that from statements made to me by colored Representatives in the other House, I believe that this voluntary division into separate schools would often be the solution of difficulty in communities where there still lingers a prejudice against a colored boy not because he is ignorant, or untidy, or immoral, but because of his blood. The colored race have in the last ten years manifested such noble and amiable qualities, judiciously

adapting themselves to the demands of their peculiar position, that we should not hesitate to believe that they will in the future conciliate and remove rather than provoke unworthy prejudices; and there is nothing in this law which would affect the legality of schools which were voluntarily thus arranged, for the white and the other for the colored children.

We were told that to give the colored people freedom was to subject the whites of the South to murder, rapine, and violence. But instead of this—while not forgetting those from whom they had received the boon of freedom—they as a general rule had a tender regard for the comfort and well-being of those to whom they were formerly enslaved, which fact, in passing, let me say is strong evidence that those who held them in bondage were not, as a general rule, hard task-masters.

We were told that if you placed them in the Army they would not fight; but in the front ranks they gave proof of their claims to high manhood.

We were told that they would abuse the elective franchise; but unless a large majority of the Senate are in error, they have most wisely employed their privilege.

So now invest them with this bill, with full and unqualified privileges, and they will so enjoy them as not to provoke, but so as to remove prejudice.

If it be asked what is the objection to classification by race, separate schools for colored children, I reply, that question can best be answered by the person who proposes it asking himself what would be the objection in his mind to his children being excluded from the public schools that he was taxed to support on account of their supposed inferiority of race.

The objection to such a law in its effect on the subjects of it is that it is an enactment of personal degradation.

The objection to such a law on our part is that it would be legislation in violation of the fundamental principles of the nation.

The objection to the law in its effect on society is that "a community is seldom more just than its laws;" and it would be perpetuating that lingering prejudice growing out of a race having been slaves which it is as much our duty to remove as it was to abolish slavery.

Then, too, we know that if we establish separate schools for colored people, those schools will be inferior to those for the whites. The whites are and will be the dominant race and rule society. The value of the principle of equality in government is that thereby the strength of the strong inures to the benefit of the weak, the wealth of the rich to the relief of the poor, and the influence of the great to the protection of the lowly. It makes the fabric of society a unit, so that the humbler portions cannot suffer without the more splendid parts being injured and deposed. This is protection to those who need it. And it is just that it should be so; for of what value is the wealth and talent and influence of the individual if you isolate him from society? Great as he may be, he is the debtor to society. Let him pay.

Sir, if we did not intend to make the colored race full citizens, if we purpose to place them under the ban of any legalized disability or inferiority, and there to hold them, we should have left them slaves.

I saw this forcible and truthful sentiment a few days since:

When men are completely sunk in degradation, they are apt to be content with their lot; but raise them a few degrees, and they immediately grow dissatisfied with their state, and are wretched indeed if they are not daily rising higher.

In the name of Justice let us now

take our depressing hand from long wronged people. Look at their history. It was the rapacity of our fathers that brought them here. They have been docile and submissive to our laws. They have never been pensioners on our charity; they have cleared the forest, reclaimed the morass, developed our wealth, brought in yearly one hundred millions of dollars in cotton—one year one hundred and forty-four millions—and cotton is the equivalent of the much-coveted gold; and without return have supported in affluence many of our people and educated their children, and they have helped fight our battles.

Now let them rise. Let them realize the assurance that Providence seems to be giving them—that higher, still higher, they shall go.

I believe that there is before that race a great future, a future which will render plain the mysterious past. They will not only have developed the vast hidden resources of our illimitable territory and here become and remain respectable citizens; but under tropics, where the darts of the Pale Rider visit with death the temerity of the white man who braves that vertical sun, there are more than a hundred million of their race. Elevated here, it may be that it is designed that some of them shall of their own volition sow the seed of a free government and a pure religion.

It may be that in the morbid imagination of the proud some one may fear that the result of this measure will be to place alongside of him in inn or theater some one in every respect his peer except that he differs in complexion. And he may feel that such an event would be an indignity and humiliation. Be it so, sir. The dissatisfaction of a vain pride does not have the weight of the dust in the balance in the eye of reason or in the sight of Him who made of one blood all nations of men when contrasted with the political and consequently the intellectual and moral elevation of a race. Think for yourselves what is the import of that word "race," with its one hundred and twenty millions, its ever-succeeding generation moving on a stage that is probationary to immortality. I trust that in legislating on this, the horizon of our reflections may not be limited by a few short years or this brief generation, but that it may compass the long life of the nation, yes, the perpetuity of our planet.

Now let the call attention to the law. It is claimed that the enactment of the bill would be in violation of the Constitution, because the regulation of inns, public conveyances, and places of amusement, common schools, institutions of learning and benevolence, and cemeteries, supported by taxation, are under the regulation of the States and not of the General Government. The bill proposes to leave them under State control, and expressly says that all persons are to have the full and equal enjoyment of inns, &c., subject to the conditions and limitations established by law—State statutes and common law—with the exception that such laws must be applicable alike to citizens of every race and color and regardless of previous servitude.

Is it constitutional for the General Government to legislate to prevent discrimination on account of race, &c.? We maintain that the General Government has this right under three different grants of power.

1. Under the thirteenth, fourteenth, and fifteenth amendments, considered together and in connection with the contemporaneous history;

2. Under the provision of the

fourteenth amendment, which prohibits a State from enforcing any law which abridges the privileges and immunities of citizens of the United States; and also,

3. Under the provision of article fourteen, which requires a State to give to every person within its jurisdiction the equal protection of the laws; under the general power given Congress to enforce these provisions by appropriate legislation.

I cannot more forcibly nor with greater brevity show that these amendments were intended to do away with slavery—to wipe out every consequence of it; to prevent State legislation of every kind that discriminated on account of race, color, &c., and make the race formerly in servitude equal in all respects to other citizens—than by reading a portion of the opinion of the majority of the court in the Slaughterhouse cases, (16 Wallace, 67, 68 and 69.)

But within the last eight years three other articles of amendment of vast importance have been added by the voice of the people to that now venerable instrument.

The most cursory glance at these articles discloses a unity of purpose when taken in connection with the history of the times, which cannot fail to have an important bearing on any question of doubt concerning their true meaning.

Nor can such doubts, when any reasonably exist, be safely and rationally solved without a reference to that history; for in it is found the occasion of the necessity for recurring again to the great source of power in this country; the people of the States, for additional guarantees of human rights additional powers of the Federal Government; additional restraints upon those States. Fortunately that history is fresh within the memory of us all, and its leading features, as they bear upon the matter before us, free from doubt.

The institution of African slavery as it existed in about half the States of the Union, and the contents prevailing the public mind for many years between these who desired its curtailment and ultimate extinction and those who desired additional safeguards for its security and perpetuation, culminated in the effort, on the part of most of the States in which slavery existed, to separate from the Federal Government, and to resist its authority. This constituted the war of the rebellion, and whatever auxiliary causes may have contributed to bring about this war, undoubtedly the overshadowing and efficient cause was African slavery. In that struggle, slavery as a legalized social relation perished.

The proclamation of President Lincoln expressed an accomplished fact as to a large portion of the insurrectionary districts, when he declared slavery abolished in them all. But the war being over, those who had succeeded in re-establishing the authority of the Federal Government were not content to permit this act of emancipation to rest on the actual result of the contest of the proclamation of the Executive. Both of which might have been questioned in after times, and they determined to place the main and most valuable result in the Constitution of the restored Union as one of its fundamental articles. Hence the thirteenth article of the amendment of that instrument. Its short sections seemed hardly to admit of construction, so vigorous is their expression and so appropriate to the purpose we have indicated.

"1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction."

"2. Congress shall have power to enforce this article by appropriate legislation."

To withdraw the mind from the contemplation of this grand yet simple declaration of the personal freedom of all the human race within the jurisdiction of this Government—a declaration designed to establish the freedom of four millions of slaves—and with a microscopic search endeavor to find in a reference to servitude, which may have been attached to property in certain localities, requires an effort, to say the least of it.

You see that the court holds that slavery caused the war; that the war in fact destroyed slavery; that in order that its permanent destruction might not be questioned in after times, the thirteenth amendment was adopted; and that this is a fact so apparent, that you need not to see it with a microscope.

If the discrimination against that race for whose benefit chiefly the amendments were adopted is because of their having recently been slaves—and as the discrimination is confined to that race, is not that the











